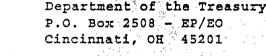
Internal Revenue Service Director, Exempt Organizations Rulings and Agreements

Date:



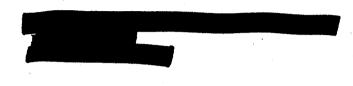
Employer Identification Number:

Person to Contact - I.D. Number:

Contact Telephone Numbers:

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Phone FAX



Dear dir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 521 of the Internal Reverue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concided that you do not qualify under another subsection.

As year organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax recurn on F on 1041 if you are a Trust, or Form 1120 if you are a corporation or a unincorporated association.

If y is are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you beline it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be a limited within 30 days from the date of this letter and must be sign by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you alle your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attacked and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Proc. ural Rules. See Treasury Department Circular No. 230.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely,

Director, Exempt Organizations Rulings and Agreements

Enclosures:

ENCLOSURE I

FACTS

was incorporated Cooperative Corporation Act as set forth, in under the The Articles of Incorporation state that the organization was formed to engage in any lawful business ne essary or desirable for the purposes of promoting, fostering and e: ouraging the intelligent and orderly harvesting, distributing and markets of and products through cooperation. Furthermore, the organization will engage in any and all activities that may be conducive to the attainment of its purposes including marketing, relling, preserving, harvesting, drying, processing, manufacturing, coming, packing, grading, storing, handling or utilizing any p: ducts produced or delivering to it by its members. Article IV of the Articles of Incorporation state that the organization is a me bership organization and will be operated for the mutual benefit of i members on a cooperative service-at-cost basis as well descributing profits on a patronage basis.

Application Form 1028, Application for Recognition of Exemption under Socion 521 of the Internal Revenue Code, was submitted by You indicated on your Form 1028 that you will enter in in o contracts with qualified members to harvest region of , in accordance with an annual cooperative permit to be issued by the will be processed and sold You also stated that the harvested and that your members are prohibited from commercial outside of Furthermore, you stated that you plan to do it with both members and non-members and that you planned to pay p ronage dividends, however, they would not be distributed to members and non-members on the same basis. Finally, on Page 3 of Form 1028 y stated that membership is limited to individuals holding limited en ry permits issued by the State of Pand that membership for harvest in composite transferred nor terminated during the

A ditional information was submitted by power of attorney on . You stated in your letter dated that that commercial license issued by the cooperative the identifies certain of its members to harvest the in the designated area annually on behalf of all of its members. You also so ted that the coccurs in the which is a stallow protected body of water and no one else may commercially this area while members are permitted to the live are harvest and put into pens where processors pull them from some later point.

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A second letter of additional information was submitted by your power the following information was of attorney on included. Individual permit holders must make a determination on or of each year regarding whether or not to become a member and participate in the cooperative that decide to participate in the cooperative harvesting right \mathbf{f}_{i-1} ego ! enhancement tax which is as each required to contribute as 2' of the harvest as required under State law. The tax revenues are to in used by the members invest season and in maintenance of heavily in preparation for the equipment. F mally, a third letter with attachments was submitted by your power the following information was attorney on Is responsible for monitoring, enhancing, i luded. r moting the perpetuation and enhancement

tion (31(b)) of the Code provides that farmers' cooperatives exempt is an taxation to the extent provided in subsection (a) thereof are formers', fruit growers', or like associations organized and operated on a cooperative basic for the purpose of marketing the products of members of other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or for the purpose of chasing supplies and equipment for the use of members or other sons and turning over such supplies and equipment to them at actual cost plus necessary expenses.

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tion 1.521-1(a) of the Income Tax Regulations states that cooperative a nociations engaged in the marketing of farm products for farmers, first growers, livestock growers, dairymen, etc., and turning back to producers the proceeds of the sales of their products, less the ressary operating expenses, on the basis of either the quantity or the

value of the products furnished by them, are exempt from income tax except as otherwise provided in section 522, or Part 1, subchapter T, chapter 1 of the Code. Section 1.521-1(d) of the regulations provides that cooperative organizations engaged in occupations dissimilar from those of farmers, fruit growers, and the like are not exempt.

Remarked Rul. 64-246, 1964-2 CB 154, provides that an association that is engaged in cooperatively marketing firth produced by its members and other patrons in privately-owned waturs, is considered to be an organization composed of producers of "farm-raised fish" which are, in other words, farm products. Alternatively, Rev. Rul. 55-611, 1955-2 CB 276, provides that an association which purchases supplies and equipment for its members who are fishermen is not an association of farmers or fruit growers, or a like association within the meaning of section 521 b) (1) of the Internal Pevenue Code of 1954 and is not exempt from Februal income tax under such section.

In inset Scavenger Company, Incorporated v. Commissioner, 84 Fed (2d) 45° Ct. D. 1190, C. B. 1937-1, 202 at 204. The court stated:

We believe, as the Commissioner contends, that under the principle of ejusdam generis, the words "like associations" are mited by the words "farmers" and "fruit growers" and as thus mited mean only such associations as market agricultural oducts, or purchase supplies and equipment of those who are agaged in producing agricultural products."

Rev Rul. 55-611 also states that an association which is not composed of trmers, fruit growers, or persons engaged in similar pursuits is not execut under section 521 of the Code unless it could be considered a "limassociation" within the intendment of that section. The provisions of any State laws are not controlling in determining status for Federal income tax purposes. See Munro L. Lyeth v. Hoey, 305 U. S. 188 Ct. D. 1370, C. B. 1938-2, 208.

Rev. Rul. 67-422, 1967-2 CB 217, states that in Dr. P. Phillips Coo. rative v. Commissioner, 17 T.C. 1002 (1951), the Tax Court of the United States held that one who merely purchases a ripe crop at harvest would not be a producer within the meaning of what is now section 521 of the Tode, since he fails to take the risks and responsibilities of the own of a growing crop. Thus, a person is a producer if, as an owner or tenant, he bears the risks of production, cultivates, operates, or manyes a farm for gain or profit—in short, if he is engaged in the trade or business of farming. A person who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the trade or business of farming, and hence is a producer. Generally, a per in who receive a fixed rental or other fixed compensation (without reference to production) is not a producer.

TAXPAYER'S POSITION

You consider your activities to be essentially a farming operation because are harvested from a finite area and can only be harvested at the times and in the specific location determined by the

You also stated in your letter dated that although you do not harvest on privately owned lands, your type of operations are very far removed from the historical methods due to the fact that you have a limited number of harvesters in a defined area.

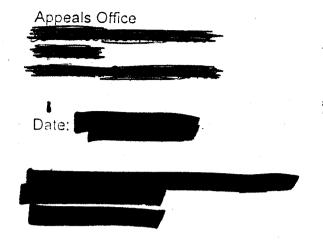
Furthermore, you stated in your letter dated. It hat you members differ from commercial in that they harvest the all cated amount, store and use them on an as-needed bass. You further indicated that can be viewed as someone who has invested in the right to harvest a crop before it is even planted an who thus bears the risk of production. You further stated that your members do not own the bed of the stated that your stated that your members do not own the bed of the stated by the State of however, the organization does have the exclusive right during specified periods to harvest the

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organization's members are harvesting in non-privately ow divates. Your members do not bear the risks of production, nor do ney cultivate, operate or manage a farm, therefore, your members are not considered producers under the relevant law. In fact, there is no crop to harvest. The that are harvested are wild salmon the are not "grown" by your members, nor are they "grown" by anyone element of the parts of the some enhancement by various organizations of the him parts of the parts of the some enhanced by the various or nizations. Your members are analogous to the individuals in the Dr. P. Phillips Cooperative case cited above in that they have purhased the right to take a ripe crop, the sale at harvest and are therefore, not producers. Your organization is not an association of carmers or fruit growers, or a like association within the meaning of action 521(b)(1) of the Internal Revenue Code.

As rdingly, you do not qualify for exemption as an organization de ribed it section 521 of the Code.

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(Rev.	Department of the Treasury - Internal Revenue Service Consent to Proposed Adverse Action (All references are to the Internal Revenue Code)			
Case	Number	Date of Latest Determination Le	etter	
Emplo	over Identification Number	Date of Proposed Adverse Action	on Letter	
Name	and Address of Organiza	tion		
	consent to the proposed adverse action relative to the above organization as shown below. I inderstand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed			
NATURE OF ADVERSE ACTION				
[8] Lo	nal of exemption		makin sakinaha pamopan kahikatarar asakatarar ga yan adan ya kan adan ya kan ka k	
] R	ocation of exemption, effec	and the second s		
1 No lification of exemption from seglien 501(c)() to section 501(c)(), effective				
[.] C	sification as a private foundation described in section 509(a), effective ****			
[] ·C	sification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for			
[] C:::	sification as an organization	described in section 509(a)(), effective		
() C	sification as an organization described in section 170(b)(1)(A)(), effective			
-	you agree to the adverse action shown above, please sign and return this consent. You should ep a copy for your records. you sign this consent before you have exhausted your administrative appeal rights, you may be your rights to a declaratory judgement under section 7428.			
Nama		(Signature instructions on Back)		
Name ·	Organization:			
Signat	and Title		Date	
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Signair	and Title		Date	
			1	



Department of the Treasury

Person to Contact

Employee ID Number

Refer Reply to:

In Re:

EO Determination

We have considered your appeal of the adverse action proposed by the Director, Exempt Organizations. The paragraph (s) checked below indicate(s) our decision.

- (X) Your application for tax exemption from Federal income tax under section of the Internal Revenue Code is:
 - () approved. You will receive a separate determination letter.
 - () modified.
 - (X) denied or () revoked.
- () You are not a private foundation as defined under code section 509(a).
- () You are an operating foundation as described in code section 4942(j)(3).
- () You have no liability for excise taxes under sections4401 and 4411 for the above tax periods.
- () Your liability for excise taxes under IRC section(s) for the above year(s) was properly reported on your return(s).
- () There is no change to your unrelated business income tax liability as reported for the above year(s).

You may direct questions about the decision to the Appeals Officer whose name and telephone number are shown above.

Sincerely,

Appeals Team Manager

